

ORIGINAL
RECEIVED

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN - 8 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Regulatory Policies Governing)
Domestic Fixed Satellites and)
Separate International Satellite)
Systems)

IB Docket No. 95-41

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE MOTION PICTURE
ASSOCIATION OF AMERICA, INC.

Fritz E. Attaway, Esquire
Bonnie J.K. Richardson
MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 Eye Street, N.W.
Washington, D.C. 20006

Michael D. Berg
Sari Zimmerman
VERNER, LIIPFERT, BERNHARD,
McPHERSON AND HAND
901 15th Street, N.W.
Washington, D.C. 20005-2301
(202) 371-6099

June 8, 1995

No. of Copies rec'd
List ABCDE

7049

RECEIVED

JUN - 8 1995

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Regulatory Policies Governing)
Domestic Fixed Satellites and)
Separate International Satellite)
Systems)

IB Docket No. 95-41

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF THE MOTION PICTURE ASSOCIATION
OF AMERICA, INC.

1. The Motion Picture Association of America, Inc. ("MPAA")^{1/}, by its attorneys, respectfully submits these Comments in response to the "Notice of Proposed Rulemaking" released April 25, 1995, in this proceeding ("Notice"). MPAA represents the leading United States producers and distributors of motion pictures and television programming. That programming is distributed domestically and worldwide by multiple technologies and distribution mechanisms, including the types of satellite systems which are the subject of the Notice. MPAA and its member companies therefore have a significant stake in the proposals in the Notice, and in the manner of their implementation.

2. These Comments detail a two-part MPAA position in response to the Notice. First, MPAA supports the thrust of the proposals, which are intended to increase the number and variety

^{1/} MPAA's member companies include Buena Vista Pictures Distribution, Inc.; Sony Pictures Entertainment Inc.; Metro-Goldwyn-Mayer Inc.; Paramount Pictures Corporation; Twentieth Century Fox Film Corporation; Universal Studios, Inc.; Warner Bros., a Division of Time Warner Entertainment Company, L.P.; and Turner Pictures.

of vehicles for the distribution of U.S.-produced programming, and to promote competition in satellite services. Second, MPAA urges the Commission, in implementing the proposals, to recognize explicitly that an unwanted side effect of liberalized distribution can be an increase in the unauthorized interception and use of U.S. programming abroad. Although the Commission cannot solve this problem completely, it can and should act to deter the piracy of U.S. programming product under color of FCC authorization. Accordingly, MPAA advocates continuation of existing FCC policy of conditioning transborder licenses upon copyright protection, and, in light of the new licensing rules, adoption of several further steps now which build upon procedures already in use. For example, the Commission should expressly include protection of copyright interests as one of the "subject to" conditions under which domestic satellite systems ("domsats") may provide services between the U.S. and noncontiguous foreign points on the same basis as "separate systems" (Notice, para. 18). Other steps are described in paragraphs 9 through 12 below.

3. Based upon a changed and increasingly global programming marketplace, the Notice proposes to eliminate historic service limitations on domsats, and to allow them to provide service internationally as well as domestically. At the same time, the Commission would free international separate system providers to offer both U.S. domestic and international service on a co-primary basis with U.S. domsats. This would end the current restriction of separate system provision of domestic

service only on an "ancillary" basis. The net of these proposals would be to allow all U.S.-licensed satellite operators to offer domestic and international services on a co-primary basis, thereby "[p]ermitting all operators to provide the widest range of service offerings technically feasible and consulted by Intelsat . . . [so as] to use their satellites more efficiently and to provide innovative and customer-tailored services" (Notice, para. 21). The Commission also expects increased competition in satellite services, particularly as "[n]ewer generations of satellites . . . can be configured to provide both international and domestic services on a co-primary basis" (Notice, para. 22).

4. As companies who are in the business of providing programming to please customers, including programming that is innovative and customer-tailored, MPAA members endorse these Commission goals. The fewer the barriers to competition in the provision of satellite services, the smaller the potential for bottleneck provider control. In multiple contexts, MPAA has historically supported proposals which contribute to the unimpeded flow of programming from producers to viewers.^{2/} Consistent with this historic concern, MPAA applauds the direction of the proposals in the Notice. To the extent that outmoded barriers to the free and legitimate flow of programming are eliminated, U.S. programmers and viewers, and the U.S.

^{2/} For example, MPAA filed Comments in a similar vein on March 21, 1995 in the pending video dialtone proceeding (CC Docket No. 87-266).

economy as a result of distribution of U.S. programming abroad, all benefit significantly.

5. At the same time, in taking the steps to achieve these laudable ends, the Commission must assure that it does all that it can to avoid inadvertently increasing the unauthorized use, distribution and interception of U.S. programming, particularly (but not only) abroad. The potential for such an increase, both with respect to U.S. licensees and recipients of their distributions, is inherent in the proposals of the Notice. The rights to programming currently carried by domsats are usually cleared for domestic use only. A domsat's copyright clearances will not automatically expand to include transborder delivery newly authorized by the Commission. Abroad, liberalized distribution under FCC authority must not provide cover for the unauthorized reception or interception of U.S. programming product. Current FCC policies, such as the conditioning of licenses upon copyright compliance, must be restated and expanded to address the potential to exacerbate the already serious problem of piracy of U.S. programming.

6. Steps taken now and historically by the Commission, other federal agencies and the Congress have addressed, and helped to reduce, this massive problem. The problem, however, continues as a major drain upon the U.S. economy, even without the potential inherent in the proposed new rules. A February, 1995 report to the Office of the U.S. Trade Representative ("USTR"), for example, listed total piracy losses for all U.S.

copyright industries at \$8.57 billion for 1994. \$1.47 billion of that total was attributed to theft of U.S. films and entertainment programs.^{3/}

7. The importance of this sector to the total U.S. economy dramatizes the need for the Commission to take appropriate action. Total worldwide revenues (U.S. and foreign) for the U.S. filmed entertainment industry were \$20.4 billion. Total foreign revenues were \$8.4 billion; without unauthorized use, that total would have been \$9.87 billion. The U.S. copyright industries of which MPAA members are a part (including movies, television programs, home videos, books, music, sound recordings and computer software) accounted for 3.7% of the U.S. Gross National Domestic Product in 1993, and provided 3,000,000 jobs. In 1993 the copyright industries contributed more to the U.S. economy, and employed more workers, than any single manufacturing sector (including aircraft, primary metals, textiles, apparel or chemicals).^{4/}

3/ Annual "Special 301" Report of the International Intellectual Property Alliance to the USTR, Appendix A, p. 2 (February 13, 1995). The USTR and the President have the power under Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, to take retaliatory action against countries which burden U.S. commerce. This explicitly includes copyright protection pursuant to "Special 301," Section 2242 of 19 U.S. Code, which requires the USTR to identify annually foreign countries that "deny adequate and effective protection of intellectual property rights, or deny fair and equitable access to United States persons that rely upon intellectual property protection." *Id.*

4/ Copyright Industries in the U.S. Economy: 1977-1993, prepared for the International Intellectual Property Alliance by Steven E. Siwek and Harold Furchtgott-Roth of Economists Incorporated, Executive Summary IV-V (January, 1995).

8. As a result, there are at least two major public interest bases for the Commission to build copyright considerations into the center of its new satellite regulatory approach. One is the need to assure that Commission processes are not abused via the illegal use of U.S. programming product under color of FCC authority. The significant modernization of satellite regulation proposed in the Notice must not be allowed to foster, inadvertently, a significant increase in the copyright problem. The second basis is the national interest in a strong economy and favorable balance of trade.

9. In paragraph 40 of the Notice, the Commission states that the issues discussed in the Notice "are not intended to represent the full range of considerations involved in implementing the proposed policy changes. We therefore invite . . . comment on any other issues raised by the proposed changes, including . . . whether any special requirements should be placed on satellite operators providing both domestic and international service" (Id.). In response to this invitation, these Comments raise the copyright issue as central to this proceeding, and MPAA recommends the steps described in the following paragraphs.

10. At a minimum, the Commission should continue its decade-old practice of conditioning all Orders and Authorizations for transborder satellite service upon copyright compliance. The Commission routinely qualifies authorizations in this area by an express indication that the authorization does not include the right to distribute "programming where the appropriate copyright

clearances have not been obtained or where the U.S. government has determined that appropriate copyright protection does not otherwise exist."^{5/} Also consistent with past practice, the Commission should expressly exclude from authorizations service to countries where the FCC has been made aware of a lack of adequate protection for U.S. programming, and the delivery of programming as to which the Commission has been made aware of a specific unresolved theft of service problem.^{6/}

11. The revision of Part 25 of Commission rules, including Section 25.140 ("Qualifications of fixed-satellite space station licensees"), should include the requirement that U.S. satellite licensees conform to copyright requirements and license conditions, and that violations can produce appropriate FCC sanctions. The FCC should make clear that it will consider adjudicated copyright felony convictions, or failure to comply with copyright conditions previously imposed, as affecting the qualifications of an applicant or licensee to retain, modify or

5/ See, e.g., RCA American Communications, Inc., Order and Authorization, Mimeo No. 4294 (May 6, 1985); LMC Satcom, Inc. Order and Authorization, 7 FCC Rcd 7677 (November 25, 1992); Hughes Communications Galaxy, Inc., Order and Authorization, 7 FCC Rcd 8582 (December 16, 1992) (authorization for the Galaxy VII (H) and Galaxy IV (H) satellites); Associated Communications of Los Angeles, Inc., Order and Authorization, 8 FCC Rcd 4060 (June 15, 1993); Hughes Communications Galaxy, Inc., Order and Authorization, 8 FCC Rcd 7076 (September 28, 1993) (authorization for Galaxy VI and SBS-6 satellites).

6/ See, e.g., RCA American Communications, Inc., Mimeo No. 4294 at 8-9, n.4.

renew a Commission license for space and earth stations.^{7/}

Application forms for transborder authority should include a certification that the applicant will comply with copyright law and Commission-imposed copyright-related conditions, and will exercise reasonable diligence to prevent the unauthorized reception of programming and signals which it distributes. These steps are no more than an articulation of current policy in the revised context of the proposed amendments to the rules.^{8/}

12. The Commission's policy with respect to copyright, and the specific steps taken to implement the policy, should be applied equally to all licensed providers, such as those offering mobile and direct broadcast satellite services (Notice, para. 38).

13. The Commission retains, and should so specify in its decision resolving this proceeding, authority and flexibility to take such other and additional steps as may be appropriate. The goal is to assure that liberalized authority to distribute programming abroad does not encompass authority to distribute U.S. programming illegally, or to fail to take adequate steps to

^{7/} This approach is analogous to Commission actions with regard to proceedings and adjudications of the Equal Employment Opportunity Commission.


^{8/} For example, FCC Form 430, the satellite "Licensee Qualification Report," already asks about felony convictions.

preclude others from the illegal interception of U.S. satellite-delivered programming.^{9/}

14. In acting as MPAA advocates here, the Commission will merely continue, and adapt, existing policy to conform to its new regulatory regime and to global conditions. In these ways the Commission will protect its processes from abuse as cover for the misuse of U.S. copyrighted material; will do what it can and must with respect to upholding U.S. national copyright law and policy; and will contribute to the strength of the U.S. economy and its competitiveness internationally.

Respectfully submitted,

**MOTION PICTURE ASSOCIATION OF
AMERICA, INC.**

By: 
Michael D. Berg
Sari Zimmerman
VERNER, LIIPFERT, BERNHARD,
McPHERSON AND HAND
901 15th Street, N.W.
Washington, DC 20005-2301
(202) 371-6099

Fritz E. Attaway
Bonnie J. K. Richardson
MOTION PICTURE ASSOCIATION
OF AMERICA, INC.
1600 Eye Street, N.W.
Washington, DC 20006

Its Attorneys

June 8, 1995

^{9/} The Commission was created in part "for the purpose of promoting safety of life and property through the use of wire and radio communication." 47 U.S.C. § 151. Copyright protection as national policy stems from the Constitution. U.S. Const. art. I, § 8.